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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,522	09/11/2001	David Hitz	103.1002.12	8740

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EXAMINER

WASSUM, LUKE S

ART UNIT	PAPER NUMBER
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2177

DATE MAILED: 05/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/954,522

Applicant(s)

HITZ ET AL.

Examiner

Luke S. Wassum

Art Unit

2177

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### Priority

1. Applicant's claim for domestic priority under 35 U.S.C. § 120 to application 09/153,094, now U.S. Patent 6,289,356, which is a continuation of application 09,108,022, filed 30 June 1998, now U.S. Patent 5,963,962, which is a continuation of application 08/454,921, filed 31 May 1995, now U.S. Patent 5,819,292, which is a continuation of application 08/071,643, filed 3 June 1993, now abandoned, is acknowledged.

### Information Disclosure Statement

2. Applicant's Information Disclosure Statement, filed 22 February 2002, has been received and considered. See attached form PTO-1449.

### Claim Objections

3. Claim 2 is objected to because of the following informalities:

In claim 2, line 16, 'all duty blocks' should be 'all *dirty* blocks'.

Appropriate correction is required.

### Double Patenting

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v Eagle Mfg. Co.*, 151

U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5. Claims 1 and 2 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 2 of prior U.S. Patent No. 5,963,962. This is a double patenting rejection.

### Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Kanome** (U.S. Patent 6,205,450) teaches a disk unit that takes a snapshot that holds the contents of files stored in the disk unit at a predetermined timing and stores the snapshot in the disk unit.

**Haye et al.** (U.S. Patent 6,078,932) teaches a method for performing a point-in-time backup using multiple copy technologies.

**Hughes** (U.S. Patent 5,875,444) teaches a method of maintaining a file system in a known correct state, including an inode table that identifies a status of each inode in the file system and a block map that maps all data blocks that are in use.

**Lo et al.** (U.S. Patent 5,870,764) teaches a data structure and associated data management methods for highly flexible storage of data for a wide variety of application programs.

**Lo et al.** (U.S. Patent 5,857,207) teaches a data structure and associated data management methods for highly flexible storage of data for a wide variety of application programs.

**Lo et al.** (U.S. Patent 5,758,347) teaches a data structure and associated data management methods for highly flexible storage of data for a wide variety of application programs.

**Myers et al.** (U.S. Patent 5,454,099) teaches a method for managing the backup copying of data sets residing in non-volatile storage and for the recovery thereof in the event of CPU failure.

**Cohn et al.** (U.S. Patent 5,448,718) teaches a data backup copying session on a data processing system.

**Spiro et al.** (U.S. Patent 5,369,757) teaches the use of a “redo” recovery mechanism that does not flush updated records to state memory after every transaction. Instead, updated records are written sequentially to an after-image log, and all of the updated records are flushed to state memory only when certain “checkpoints” occur.

**Noveck et al.** (U.S. Patent 5,218,695) teaches a file system that selectively stores and provides access to files across a local network, including shadow inode logic to enable data writing operations to be executed at high speed while conforming to stateless protocol requirements.

**Walls** (U.S. Patent 5,163,148) teaches a file backup system that facilitates backup of a file while it is being updated.

**Terry** (U.S. Patent 5,043,876) teaches a shared file environment that permits multiple users to read a file that is being updated concurrently. The process maintains N level shadows for a file to allow multiple users to read a file even though the file may be updated by one or more updaters in succession.

**Nishigaki et al.** (U.S. Patent 5,043,871) teaches a backup version page table in a storage providing a correspondence between pages of a database and the slots in a database storage medium in which pages to be recovered, if necessary, are stored.

**Thatte** (U.S. Patent 5,008,786) teaches a recoverable virtual memory for a computer system that takes periodic checkpoints which capture the state of the virtual memory.

**Kapulka et al.** (U.S. Patent 4,878,167) teaches a method for writing tagged (partitioned and classified) records from a first log stream to multiple recovery streams.

**Thatte** (U.S. Patent 4,814,971) teaches a recoverable virtual memory for a computer system that takes periodic checkpoints which capture the state of the virtual memory.

**Jones** ("Toasting the New Appliance") teaches Network Appliance's FAServer 450.

**Bobrowski** ("Protecting Your Data: Overview and Comparison of Backup and Recovery Features in Database Servers") compares backup and recovery features in database servers.

**Garcia-Molina et al.** ("Issues in Disaster Recovery") teaches the applicability of remote backups to various systems, as well as issues involved in the design, implementation and evaluation of remote backup mechanisms.

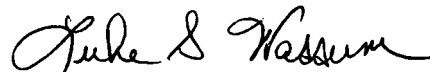
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luke S. Wassum whose telephone number is 703-305-5706. The examiner can normally be reached on Monday-Friday 8:30-5:30, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on 703-305-9790. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

In addition, INFORMAL or DRAFT communications may be faxed directly to the examiner at 703-746-5658.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



Luke S. Wassum  
Art Unit 2177

lsw  
May 17, 2002



JEAN R. HOMERE  
PRIMARY EXAMINER